

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KASHAWN WRIGHT,

Plaintiff,

-against-

THE CITY OF NEW YORK, Police Officer EDWIN
NUEZ Shield No. 24365, Police Officer EDWIN
EXHILHOMME Shield No. 12740, Police Officer
EFRAIN MORALES Shield No. 23437, in their
individual and official capacities as employees of
the City of New York,

Defendants.

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**JOINT PRE-TRIAL
ORDER**

14-CV-6873 (RJD)(RML)

1. The full caption of the case (reflecting stipulations of the parties) is as stated below:

KASHAWN WRIGHT,

Plaintiff,

-against-

Police Officer EDWIN NUEZ Shield No. 24365, Police Officer EDWIN
EXHILHOMME Shield No. 12740, Police Officer EFRAIN MORALES Shield No.
23437, in their individual and official capacities as employees of the City of
New York,

Defendants.

2. Parties and Counsel

Plaintiff's Trial Counsel

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Afsaan Saleem, Esq.

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Defense's Trial Counsel

Zachary W. Carter

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3. The Court has subject matter jurisdiction on the basis that this lawsuit presents a federal question, namely plaintiff's rights under 42 U.S.C. 1983, the Constitution and the 4th, 5th, and 14th Amendments.

4. a. Plaintiff's claims to be tried are as follows:

1. Pursuant to 42 U.S.C. 1983, federal excessive force against all individually named defendants.

b. Plaintiff's claims that are not to be tried are as follows:

1. Federal law false arrest;
2. Federal malicious prosecution;
3. City of New York liability under Monell;
4. State law false arrest;
5. State law malicious prosecution;
6. State law assault and battery;
7. State law intentional infliction of emotional distress;
8. City liability under respondeat superior;
9. City liability under negligent hiring and retention.

c. Defendants' defenses to be tried are as follows:

- a) The complaint fails to state a claim upon which relief can be granted;
- b) Defendants have not violated any rights, privileges, or immunities under the Constitution or laws of the United State or the State of New York or any political subdivision thereof, nor have defendants

violated any Act of Congress providing for the protection of civil rights;

- c) Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or that of a third party and was not the proximate result of any act of defendants;
- d) Any force used was reasonable under the circumstances;
- e) Plaintiff has failed to mitigate any alleged damages; and
- f) Defendants Nuez, Exhilhomme and Morales have not violated any clearly established laws of which a reasonable person would have known and therefore is protected by qualified immunity.

5. The case is to be tried before a jury. The parties anticipate needing 2 days of trial testimony for his case and a total of 3-4 days for trial.

6. All parties have not consented to trial of the case by a magistrate judge.

7. Stipulations: None

8. Witnesses

Plaintiff's Witness List

- a. Kashawn Wright; will testify about the incident and any medical treatment;
- b. Police Officer EDWIN NUEZ; will testify about the incident and any medical treatment;
- c. Police Officer EDWIN EXHILHOMME; will testify about the incident and any medical treatment;
- d. Police Officer EFRAIN MORALES; will testify about any paperwork that he prepared;
- e. Witness from the NYPD Communications Division who can interpret the SPRINT report;
- f. Chaberny Figueroa; will testify about the incident;
- g. Malik Birdsong; will testify about the incident;
- h. EMT Jason Gray; will testify about his observations and treatment of plaintiff;
- i. EMT Kadeem Douglas; will testify about his observations and treatment of plaintiff;
- j. Jonathan Rose, M.D.; will testify about the medical treatment plaintiff received at Brookdale Hospital Medical Center;
- k. Tahisha Tolbert, M.D.; will testify about the medical treatment plaintiff received at Brookdale Hospital Medical Center;
- l. Chin Park, M.D.; will testify about the medical treatment plaintiff received at Brookdale Hospital Medical Center;
- m. Dr. Kotari; will testify about the medical treatment plaintiff received at Brookdale Hospital Medical Center;

- n. Timothy L. Sutton, PA; will testify about the medical treatment plaintiff received at Brookdale Hospital Medical Center;
- o. Nigel S. Alves, PA; will testify about the medical treatment plaintiff received at Brookdale Hospital Medical Center;
- p. Yaakov Levenshteyn, PA; will testify about the medical treatment plaintiff received at Brookdale Hospital Medical Center;
- q. Daniel Ricciardi, Assistant District Attorney, Kings County; will testify about what the defendants told him of the incident;
- r. Michael Banks, will testify about his complaint against Sgt. Nuez;
- s. Ms. Nyree Williams, will testify about her complaint against Sgt. Nuez;

*Defendants object to witnesses J through Q under F.R.E. 402, 403 and 802, as they are cumulative, may confuse or mislead the jury, and their testimony may be wholly predicated on hearsay. In addition, defendants object to any treating physicians being called as plaintiff has failed to make the required disclosures under FED. R. CIV. P. 26.

**Plaintiff asserts that defendants objections to witnesses J through Q are not raised in good faith, as defendants' Initial Disclosures list as witnesses defendants may call: "Plaintiff's treating physician from Brookdale Hospital" and "plaintiff's treating physician."

Defendants' Witness List

- 1) Lieutenant Edwin Nuez (in person testimony regarding the facts and circumstances of plaintiff's conduct and arrest);
- 2) P.O. Edwin Exhilhomme (in person testimony regarding the facts and circumstances of plaintiff's conduct and arrest);
- 3) P.O. Efrain Morales (in person testimony regarding the facts and circumstances of plaintiff's conduct and arrest);
- 4) P.O. Mikhail Goncharov (in person testimony regarding the facts and circumstances of plaintiff's trip to the hospital); and
- 5) Ilissa Brownstein, Esq. (in person testimony regarding plaintiff's attempt to file a separate lawsuit).

*Defendants reserve the right to call any of plaintiff's witnesses.

**Plaintiff objects to P.O. Mikhail Goncharov as defendants have never identified him as a witness with knowledge as required under Fed. R. Civ. P. 26.

**Plaintiff objects to Ilissa Brownstein, Esq. as any testimony defendants seek to elicit would run afoul of plaintiff's attorney-client privilege.

Defendants Respond: Plaintiff received sufficient information regarding P.O. Goncharov in discovery, and defendants do not seek to elicit

testimony regarding privileged information from Brownstein.
Defendants will respond more fully to any motion by plaintiff.

9. Deposition testimony to be offered in case in chief: None

10. A list of Exhibits to be offered in Plaintiff's case in chief:

Objection	Exhibit No.	Bates Nos.	Exhibit Type/Name
402, 403, 802	1	D10 – D13	Memo Book of Nuez
	2	D22	Medical Treatment of Prisoner Form
	3	D23 – D46 or P004-041	Brookdale Hospital Center Medical Records of Plaintiff
	4	D47 – D49	Prehospital Care Report Summary
402, 403, 802	5	D50 – D52	Memo Book of Exilhomme
402, 403, 802, 901	6	D64 – D65	DA's Complaint Room Screening Sheet
402, 403, 802, 901	7	D69 – D70 and/or D66-D67	Criminal Court Complaint
402, 403, 802, 901	8	D93	Notice Pursuant to CPL 710.30(1)(a)
402, 403, 802, 901	9	D113 – D121	SPRINT Report
	10	D122 – D147	Jamaica Hospital Medical Center records for Nuez
	11	D1125 – D1145	Jamaica Hospital Medical Center records for Nuez
	12	D98 – D99	Color photos of Nuez
402, 403, 802, 901	13	D1 – D3	Omniform System – Arrests
402, 403, 802, 901	14	D4 – D6	Omniform System – Complaints
402, 403, 802	15		Deposition Transcript of Nuez (for impeachment purposes)
402, 403, 802	16		Deposition Transcript of Exilhomme (for impeachment purposes)
402, 403, 802	17	P047-P115	Correctional Health Services medical records
402, 403, 802	18	P116-P117	Pre-Arrest Screening Correctional Health Services
402, 403,	19	D1-D3	Omniform System – Arrests

Objection	Exhibit No.	Bates Nos.	Exhibit Type/Name
802			
402, 403, 802	20	D4-5	Omniform System – Complaints
402, 403, 802	21	D8-9	Arraignment Screening Times
402, 403, 802	22	D14	Certificate of Disposition
402, 403, 802	23	D72-D73	Property Clerk’s Invoice
402, 403, 802	24	D81-D83	Memo Book Entry of Morales
402, 403, 802	25	D86	Line Of Duty Injury report for Exilhomme
402, 403, 802	26	D87	Line of Duty Injury report for Nuez
	27	D98-D99	Color Photos of Sgt. Nuez
402, 403, 404, 802	28	D100-101	CPI for Nuez
402, 403, 404, 802,	29	D103	CCRB History for Nuez
402, 403, 404, 802	30	D105-106	IAB Resume for Nuez
	31	D157	Command Log
402, 403, 404, 802	32	D169-D185	IAB Complaint against Nuez
402, 403, 404, 802	33	D388	Investigating Officer’s Report delivery of letter of instruction (re: Sgt. Nuez IAB complaint)
402, 403, 404, 802	34	D391	Investigating Officer’s Report Letter of Instruction (re: Sgt. Nuez IAB complaint)
402, 403, 404, 802	35	D392-D393	Interview with Sgt. Nuez (re: Sgt. Nuez IAB complaint)
402, 403, 404, 802	36	D475-D477	1/11/11 Interview with Nyree Williams (re: Sgt. Nuez IAB complaint)
402, 403, 404, 802	37	D480-D481	Review of calls to command center (re: Sgt. Nuez IAB complaint)
402, 403, 404, 802	38	D493-D494	Phone interview with Michael Banks (re: Sgt. Nuez IAB complaint)
402, 403, 404, 802	39	D507-D508	12/5/11 Interview with Nyree Williams (re: Sgt. Nuez IAB complaint)
402, 403, 404, 802	40	D512-D513	Interview with Michael Banks (re: Sgt. Nuez IAB complaint)
402, 403,	41	D542	Letter of Instruction (re: Sgt. Nuez IAB

Objection	Exhibit No.	Bates Nos.	Exhibit Type/Name
404, 802			complaint)
	42	D953-D998	Medicaid records
402, 403, 404, 802	43	D1029-D1030	Exhilhomme Performance Evaluation
402, 403, 404, 802	44	D1060	Probationary Level Monitoring for Nuez
402, 403, 404, 802	45	D1075	Performance Evaluation for Nuez
402, 403, 404, 802	46	D1294	Letter of Instruction for Morales
402, 403, 404, 802	47	D1298-D1305	IAB Findings for Morales
	48	D1326-D1840	Plaintiff's Medical Records from NYC HHC

Defendants' Exhibits

Desig	Description of Exhibit	Obj.	Basis for Objection
A	Certified Medical Records from Brookdale Hospital (D 23 – D 49)		
B	Medical Treatment of Prisoner Form (D 22)		
C	Command Log Entry for Plaintiff (D 157)	FRE 401, 402, 403, 404	
D	Criminal Court Felony Jacket (D 21)	FRE 401, 402, 403, 404	
E	Warrant for Plaintiff (D 80)	FRE 401, 402, 403, 404	
F	Photographs of Lieutenant Nuez's Injuries (D 95- D 96, D 98- D 99, 1924)		
G	Certified Medical Records for Edwin Nuez (D 122 – D 147)		
H	Certified Medical Records for Edwin Exhilhomme (D 1125 –		

	D 1145)		
I	Line of Duty Injury Reports (D 86 – D 87)		
J	New York City Department of Correction Printouts (D 170 – D 174)	FRE 401, 402, 403, 404	
K	Rap Sheet for Plaintiff (not yet available)	FRE 401, 402, 403, 404	
L	Rap Sheets for Chaberny Figueroa and Malik Birdsong (not yet available)	FRE 401, 402, 403, 404	
M	Office of Court Administration Records for Plaintiff, Figueroa, and Birdson	FRE 401, 402, 403, 404	
N	Records of the Criminal Court related to plaintiff's June 18, 2014 arrest (not yet available)	FRE 401, 402, 403, 404	
M	Plaintiff's Notice of Claim (D 164 – D 168)	FRE 401, 402, 403, 404	
N	Plaintiff's Stipulation with the New York City Office of the Comptroller	FRE 401, 402, 403, 404	
O	Plaintiff's Medicaid Claims Report (D 953 – D 998)	FRE 401, 402, 403, 404	
P	Transcript of the Deposition of Plaintiff	FRE 401, 402, 403, 404	
Q	New York City Department of Correction Inmate Folder for Plaintiff's June 2014 Incarcerations (not yet available) and March 31, 2015 (D 1206 – D 1256)	FRE 401, 402, 403, 404	
R	New York State Department of	FRE 401, 402, 403,	

	Corrections Inmate History Printout (D 1925 to D 1935)	404	
S	Correctional Health Services Medical Records (D 1326 – D 1691)		
T	NYDOCCS Health Records (D 1692 0 D 1840)		
U	Complaint	FRE 401, 402, 403, 404, 602	
V	Amended Complaint	FRE 401, 402, 403, 404, 602	
W	Plaintiff's Objections and Responses to Defendant's First Set of Interrogatories and Requests for the Production of Documents	FRE 401, 402, 403, 404, 602	
X	Plaintiff's Amended Objections and Responses to Defendant's First Set of Interrogatories and Requests for the Production of Documents	FRE 401, 402, 403, 404, 602	

**Defendants reserve the right to use any of plaintiff's exhibits.


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Dated: Brooklyn, New York
July 15, 2016


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SO ORDERED:

HON. RAYMOND J. DEARIE, U.S.D.J.